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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/619,447

07/16/2003

Roland Muller

0902-004

7697

7590

07/07/2005

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EXAMINER

NGUYEN, THONG Q

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,447

Applicant(s)

MULLER ET AL.

Examiner

Thong Q. Nguyen

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 9 is/are rejected.
- 7) ☒ Claim(s) 10 and 14-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/16/03&2/9/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Invention I in the reply filed on April 25, 2005 is acknowledged. The traversal is on the ground(s) that the generic claim 9 is allowable. This is not found persuasive because the device as claimed in the present claim 9 is not allowable for the reasons as set forth in this Office action.

As a result, claims 1-8, 10 and 14-16 of the invention I and the linking claim 9 are examined in this Office action. Claims 11-13 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

The requirement is still deemed proper and is therefore made FINAL.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Oath/Declaration

3. Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in Germany on July 18, 2002. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

Drawings

4. The drawings contained eight sheets of figures 1-8 were received on July 16, 2003. These drawings are approved by the Examiner.

Specification

5. The abstract of the disclosure is objected to because it contains more than one paragraph. Correction is required. See MPEP § 608.01(b).
6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is

requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

8. Claims 4, 14 and 16 are objected to because of the following informalities.

Appropriate correction is required.

a) In claim 4: on line 3, the feature thereof "the handle" lacks a proper antecedent basis. Applicant should note that claim 3, not claim 2, does provide an antecedent basis for the mentioned feature. Should the claim 4 be amended to dependent upon claim 3 to make the claim 4 comply with the requirement of 35 USC 112, second paragraph?

b) In claim 14: on line 2, each of the features thereof "the locking member" and "the pivot member" lacks a proper antecedent basis. Applicant should note that claim 10, not claim 9, does provide an antecedent basis for each of the mentioned features. Should the claim 14 be amended to dependent upon claim 10 to make the claim 14 comply with the requirement of 35 USC 112, second paragraph?

c) In claim 16: on line 2, the feature thereof "the pivot member" lacks a proper antecedent basis. Applicant should note that claim 10, not claim 9, does provide an antecedent basis for the mentioned feature. Should the claim 16 be amended to dependent upon claim 10 to make the claim 16 comply with the requirement of 35 USC 112, second paragraph?

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Heller (U.S. Patent No. 3,887,267).

Heller discloses an apparatus for adjusting a microscope. The apparatus as described in columns 6-8 and shown in fig. 1 comprises a microscope (9) which is understood as an optical device has plural lenses; a chassis (8) for accommodation of the microscope; and a mouth switch arrangement. The mouth switch arrangement comprises a mouth switch (29) to be operated by a mouth of an operator and a mouth switch mount (27, 28, 31) for displaceably mounting the mouth switch to a first base (27) wherein the mouth switch mount comprises a rod (31) which is attached to the chassis (8) via the first base (27), and a support (28) fixed to the rod (31). It is noted that a screw is used to secure the support (28) to the rod (31) and thus a loose release of the screw will allow the support (28) to longitudinally shift along the rod.

Allowable Subject Matter

11. Claims 1-8 are allowed over the cited art.

12. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claims 14-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The mouth switch arrangement as recited in the present claim 1 and the microscopy arrangement having such a mouth switch as recited in present claim 10 are patentable with respect to the cited art, in particular, the U.S. Patent Nos. 3,887,267 and 3,877,778 by the limitations related to the structure of the support of the mouth switch mount. In particular, the mouth switch mount of the cited art does not have a pivot member pivotable relative to the locking member and supporting the mouth switch as claimed.

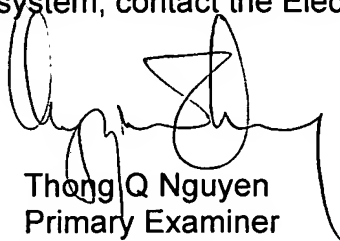
Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thong Q Nguyen
Primary Examiner
Art Unit 2872
